EVIDENCE—WAIVER OF PRIVILEGED COMMUNICATIONS BY PATIENT.—In an action for injuries to the plaintiff's eye he testified that Dr. L treated the eye after the accident, that it was swollen, also that it was so bruised that the doctor told him he could not treat it at that time but to come back a few days later for treatment. Defendant then wished to show by Dr. L that the condition of the eye was not due to the accident but to its prior diseased condition. The trial court excluded this evidence. *Held* to be error, on the ground that the testimony of the plaintiff amounted to a waiver of his privilege. *McKenney* v. *American Locomotive Co.* (N. Y. 1914), 149 N. Y. Supp. 826.

At the common law professional communications made to a physician were not privileged, but today by statutory provision in many states the general rule is that a physician cannot, without the consent of the patient, testify concerning information which he may have acquired from a patient while attending him in a professional capacity, whether such information was orally communicated to the physician or obtained by an examination or observation of the patient. *Keast* v. *Santa Ysabel Co.*, 136 Cal. 256; *Gurley* v. *Park*, 135 Ind 440; *In Re Myers' Will*, 184 N. Y. 54; *Gartside* v. *Insurance Co.*, 76 Mo. 446; *Col. Fuel & Iron Co.* v. *Cummings*, 8 Col. App. 541. Such communications are privileged to enable a patient, without the danger of exposure, fully to disclose all facts necessary to his proper treatment, consequently any conduct by him indicating an intention to lift the bar of secrecy and privacy and to disclose privileged matters, operates as a waiver of the privilege. This he may do by suing the physician for malpractice (*Becknell* v. *Hosier*, 10 Ind. App. 5; *Cramer* v. *Hurt*, 154 Mo. 112); or by calling and permitting the physician to testify as to matters acquired in a professional capacity. *McKinney* v. *Ry. Co.*, 104 N. Y. 352; *Sovereign Camp* v. *Grandon*, 64 Neb. 39; *Lissak* v. *Crocker Estate Co.*, 119 Cal. 442. So the patient may, by himself testifying to confidential matters, waive his privilege. *Marx* v. *Manhattan Ry. Co.*, 56 Hun. (N. Y.) 575; *Rauh* v. *Deutscher Verein*, 51 N. Y. Supp. 985. But the mere fact that a patient, as in the principal case, in testifying mentions the name of the physician who treated him, and the general nature of the injury, should thereby waive his privilege is difficult to understand. *Williams* v. *Johnson*, 112 Ind. 273; *McConnell* v. *Osage*, 80 Ia. 293. For it is held that the statements of a patient of the general nature of an injury, of the fact that a certain physician treated him, and of other matters equally open to the observation of any other person are not privileged or confidential communications; and a physician might testify as to such matters without violating the privilege of the patient. *Jones* v. *Brooklyn Ry. Co.*, 3 N. Y. Supp. 253; *Edington* v. *Aetna Life Insurance Co.*, 77 N. Y. 564-571; *Becker* v. *Metropolitan Life Insurance Co.*, 90 N. Y. Supp. 1007; *May* v. *Northern Pacific Ry. Co.*, 32 Mont. 522.

HUSBAND AND WIFE—NECESSARIES.—Plaintiff, an attorney at law, sought to recover in an action against the husband for professional services rendered the defendant's wife during divorce proceedings, instituted by the husband, in which no divorce was granted. Plaintiff did not show any express con-